Sou Yong v Yuzin bte Abdulah @ Ho Yuzin

HIGH COURT (KUALA LUMPUR) — SUIT NO S2–22–362 OF 1997
KAMALANATHAN RATNAM J
26 MARCH 1999

Contract *— Uncertainty — Terms — Concerted effort not to disclose actual purchaser — Whether uncertainty as to actual purchaser and other terms — Whether valid and subsisting contract — Whether court should direct parties to enter into formal contract*

The defendant was the registered owner of a piece of land ('the land'). The plaintiff contended that by a letter dated 6 March 1997 signed by both parties, the defendant agreed to sell the land to the plaintiff for a consideration of RM220,000. The plaintiff paid a deposit of 10% as was required by the letter. It was agreed that a formal sale and purchase agreement was to be drawn up by the plaintiff's solicitors pending a search to be done on the land. By a letter dated 17 April 1997, the defendant wrote to the plaintiff repudiating the sale of the land to the plaintiff and returned the 10% deposit which she had earlier accepted. The plaintiff rejected the repudiation and filed an action claiming for a declaration that the letter dated 6 March 1997 was valid and subsisting and an order for specific performance that the defendant do enter into a formal sale and purchase agreement and complete the same pursuant to the terms of the letter dated 6 March 1997. The defendant contended that there was no concluded agreement between the parties. Alternatively, she pleaded that if there was an agreement, it was subject to several conditions precedent before a formal written agreement could be exchanged between them. The defendant contended that the letter dated 6 March 1997 which she executed was due to fraudulent misrepresentation made by the plaintiff — whilst the plaintiff had all along informed her that the property was for his own use, the draft agreement showed that the purchaser of the land was one Countryside Homestead Sdn Bhd' ('Homestead'). The plaintiff argued that a valid agreement had been concluded with sufficient consideration in the form of the 10% deposit which the defendant had banked into her account. Though there was a mention of a need to sign a formal sale and purchase agreement, the plaintiff argued that that phrase was indicative of an intention to merely formalize an agreement which had already been concluded between the parties.

Held, dismissing the claim:

(1) Although the letter dated 6 March 1997 had been signed by the plaintiff and the defendant, it would seem from the evidence of the plaintiff himself that the actual purchaser was not the plaintiff but Homestead. This was not reflected in the letter. The court found that there was a concerted effort by the plaintiff not to let the defendant know that it was Homestead that was purchasing the land (see p 703G–H).

(2) In so far as the letter dated 6 March 1997 was concerned, the plaintiff was the actual purchaser. However, almost all the other document suggest that the actual purchaser was Homestead. Yet the statement of claim showed that the plaintiff was the party claiming. Clearly, there was uncertainty as to the actual purchaser. Further, the first draft agreement contained, amongst other terms, a term that the defendant would create a power of attorney in favour of the plaintiff but, in the second draft, this term was omitted. It was clear that there was uncertainty even with regard to the terms of the agreement. Only where the parties to the transaction, the property, the price and the essential terms have all been identified with sufficient clarity is it termed an 'open contract and enforceable'. On this ground alone, this claim must fail for uncertainty (see p 703I–704B).

(3) The plaintiff could not ask for an order that the defendant do enter into a formal sale and purchase agreement because the plaintiff could not ask the court to order parties to enter into a contract. This plea means the plaintiff agreed that there was no contract and therefore it had to seek this court's assistance to make a contract. What the plaintiff ought to have asked for is a declaration that the letter dated 6 March 1997 constitutes a contract and then ask for specific performance of the terms of that letter (see p 704 C–E).

[Bahasa Malaysia summary

Defendan adalah pemunya berdaftar sebidang tanah ('tanah tersebut'). Plaintif menegaskan bahawa melalui sepucuk surat bertarikh 6 Mac 1997 yang ditandatangani oleh kedua-dua pihak, defendan telah bersetuju untuk menjual tanah tersebut kepada plaintif untuk balasan RM220,000. Plaintif telah membayar deposit sebanyak 10% seperti yang dikehendaki di dalam surat tersebut. Adalah dipersetujui bahawa suatu perjanjian jual beli rasmi mestilah dibuat oleh peguam plaintif sehingga suatu carian dibuat ke atas tanah. Melalui surat bertarikh 17 April 1997, defendan tersebut telah menulis kepada plaintif untuk menolak penjualan tanah tersebut kepada plaintif dan mengembalikan 10% deposit yang beliau telah terima. Plaintif menolak penolakan tersebut dan telah memfailkan tindakan untuk menuntut suatu deklarasi bahawa surat bertarikh 6 March 1997 adalah sah dan dan berterusan dan suatu perintah pelaksanaan spesifik bahawa defendan diperintahkan untuk memasuki perjanjian jual beli yang rasmi dan memuaskannya menurut terma-terma surat bertarikh 6 March 1997. Defendan menegaskan bahawa tidak terdapat perjanjian yang boleh disimpulkan antara pihak-pihak. Secara alternatif, beliau memplid bahawa jika terdapat perjanjian, ia adalah tertakluk kepada beberapa prasyarat sebelum suatu perjanjain rasmi bertulis boleh dimasuki di antara

mereka. Defendan telah menegaskan bahawa surat tersebut yang bertarikh 6 Mac 1997 yang beliau telah tandatangani adalah disebabkan oleh salah nyata fraud yang dibuat oleh plaintif — walaupun sepanjang masa plaintif telah memberitahunya bahawa harta tersebut adalah digunakan untuk kegunaannya sendiri, perjanjian deraf menunjukkan bahawa pembeli tanah tersebut adalah Countryside Homestead Sdn Bhd ('Homestead'). Plaintif berhujah bahawa suatu perjanjian yang sah telah dimasuki dengan balasan yang mencukupi dalam bentuk deposit 10% di mana defendan telah memasukkan ke dalam akaunnya di bank. Walaupun dinyatakan terdapat keperluan untuk menandatangani suatu perjanjian jual beli yang rasmi, plaintif berhujah bahawa ayat tersebut telah menunjukkan terdapat niat untuk merasmikan suatu perjanjian yang telah dimasuki antara pihak-pihak.

Diputuskan, menolak tuntutan:

(1) Walaupun surat bertarikh 6 Mac 1997 telah ditandatangani oleh plaintif dan defendan, nampaknya daripada keterangan plaintif sendiri, pembeli sebenar bukanlah plaintif tetapi Homestead. Ini tidak dibayangkan di dalam surat tersebut. Mahkamah mendapati bahawa terdapat usaha bersepadu oleh plaintif untuk tidak memberitahu defendan bahawa Homestead yang membeli tanah tersebut (lihat ms 703G–H).

(2) Sejauh mana surat bertarikh 6 Mac 1997 adalah berkaitan, plaintif adalah pembeli sebenar. Namun, hampir segala dokumen lain mencadangkan bahawa pembeli sebenar adalah Homestead. Tetapi pernyataan tuntutan telah menunjukkan bahawa plaintif yang menuntut. Dengan jelas, tidak terdapat ketentuan mengenai pembeli sebenar. Selanjutnya, terma-terma lain di dalam deraf perjanjian yang pertama mengandungi, antara lain, suatu terma bahawa defendan akan mewujudkan surat wakil kuasa yang memihak kepada plaintif tetapi di dalam deraf kedua, terma ini telah dikeluarkan. Adalah jelas bahawa terdapat juga ketidaktentuan mengenai terma-terma perjanjian tersebut. Hanya apabila pihak-pihak kepada suatu transaksi, harta dan juga terma-terma perlu telah dikenal pasti dengan ketepatan yang mencukupi, ia boleh ditermakan sebagai 'kontrak terbuka dan boleh dikuatkuasakan'. Atas dasar ini sahaja, tuntutan ini akan gagal untuk ketidaktentuan (lihat ms 703I–704B).

(3) Plaintif tidak boleh memohon untuk suatu perintah bahawa defendan memasuki suatu perjanjian jual beli yang rasmi kerana plaintif tidak boleh meminta mahkamah untuk mengarahkan pihak-pihak untuk memasuki kontrak. Ini bermaksud, plaintif bersetuju bahawa tidak terdapat kontrak dan oleh itu ia terpaksa meminta bantuan mahkamah utnuk membuat suatu kontrak. Apa yang plaintif patut minta adalah suatu deklarasi bahawa surat tersebut yang bertarikh 6 Mac 1997 terjumlah kepada suatu

kontrak dan kemudian meminta pelaksanaan spesifik untuk terma-terma surat tersebut (lihat ms 704C–E).]

Notes

For a case on uncertainty as to terms, see 3 *Mallal's Digest* (4th Ed, 1997 Reissue) para 3126.

Cases referred to

Charles Grenier Sdn Bhd v Lau Wing Hong [1996] 3 MLJ 327 (refd)
Scammell v Ouston [1941] 1 All ER 14 (refd)

Legislation referred to

Companies Act 1965 Form 49
Contract Act 1950 s 19
Specific Relief Act 1950 ss 21, 21(2)(a)

Andrew Ng (*PC Wong* with him) (*Yeo & Yeo*) for the plaintiff.
N Saraswathy Devi (*RS Sodhi* with her) (*N Saraswathy Devi*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam J:

Plaintiff's case

The defendant is the registered owner of all that land known as EMR 762, Lot No 1748 Mukim of Perak ('the said land'). The plaintiff contends that by a letter dated 6 March 1997 and signed by both parties, the defendant agreed to sell the said land to the plaintiff for a consideration of RM220,000. The plaintiff paid a deposit of 10% as was required by the said letter amounting to RM22,000. It was inter alia agreed that a formal sale and purchase agreement was to be drawn up by the plaintiff's solicitors pending a search to be done on the said land. The plaintiff's solicitors then forwarded a first draft to the defendant for her approval.

By a letter dated 17 April 1997 the defendant wrote to the plaintiff's solicitors repudiating the sale of the said land to the plaintiff and at the same time making out a cheque for the sum of RM22,000, thus returning the 10% deposit which she had earlier accepted. The plaintiff's solicitors rejected the said repudiation and returned the said cheque to the defendant. The plaintiff then lodged a private caveat on the said land to protect his interest.

Subsequently, through new solicitors the plaintiff yet again wrote to the defendant reminding her of the agreement to sell the said land and of her acceptance of the plaintiff's deposit. By her personal letter to the plaintiff's solicitors, the defendant yet again stated that she did not agree to the terms

and conditions as stated in the said letter and again returned the cheque. The plaintiff's solicitors too, returned the said cheque.

The plaintiff's claim

The plaintiff therefore claimed:

(1) a declaration that the letter to sell dated 6 March 1997 is valid and subsisting;

(2) an order for specific performance that the defendant do enter into a formal sale and purchase agreement and complete the same pursuant to the terms of the letter dated 6 March 1997;

(3) damages suffered to be assessed;

(4) interest at the rate of 8% from this date to date of payment;

(5) costs;

(6) any further or other relief as the Honourable Court deems fit.'

Case for the defendant

The defendant contended that there was no concluded agreement between the parties. Alternatively she pleaded that if there was an agreement it was subject to several conditions precedent before a formal written agreement could be exchanged between them. The defendant contended that the letter dated 6 March 1997 which she executed was due to fraudulent misrepresentation made by the plaintiff and his witness.

She averred that she was under the influence of liquor when she signed the said letter in the Lake Club when it was dark and when she did not have her spectacles on. She argued that since the plaintiff had agreed that the deposit of RM22,000 was paid subject to contract, she was therefore entitled to refund the money. She also maintained that the parties had agreed that a valuation would be done on the said land and that the plaintiff had agreed to pay the true price of the land upon valuation being done. She also maintained that a copy of the letter dated 6 March 1997 was never given to her on the day she signed it. Whilst the plaintiff had all along informed her that the property was for his own use she was surprised that the draft agreement showed that the purchaser of the said land was one 'Countryside Homestead Sdn Bhd' ('Homestead'). The defendant contended she would rely on s 19 of the Contracts Act 1950 ('the Act'), which would render an agreement (if any) voidable at the option of the party whose consent to the agreement was obtained by coercion, fraud or misrepresentation.

Findings of the court

The plaintiff testified that on 14 February 1997, whilst he was with two friends, namely Raymond Lim ('Lim') and Ho Hon Hing ('Ho'), he invited the defendant to join him for drinks since she was alone. When Ho mentioned he was working in Temerloh, the defendant then said that she

had a piece of land in Temerloh which she wished to sell and asked them to find a buyer for her. The plaintiff then suggested that Ho ought to check the land and that the three of them would then make her an offer. The defendant hoped to dispose off the land for RM250,000.

On 6 March 1997, Lim came to see him that morning and informed him that Ho had been to see him to borrow RM60,000 as he, Ho had wanted to buy the said property himself since the defendant had agreed to sell it to him for RM220,000. On hearing this, the plaintiff said that he was very angry and that he then rang up the defendant who agreed to meet him for lunch at the Lake Club and who also said that she had agreed to go to Temerloh the next day to sign the agreement with Ho. It was at the Lake Club during lunch that both parties had signed the letter dated 6 March 1997 and witnessed by Lim. According to the plaintiff, the said letter was prepared at the Lake Club by Lim. Since the defendant had provided him with a copy each of her identity card and the title, Lim was able to insert the details into the said letter.

The letter dated 6 March 1997 reads as follows:

> To Whom It May Concern
>
> In consideration of the sum in Ringgit Twenty-Two Thousand (RM22,000 only representing the 10% of the selling price for the piece of agriculture land, known as Lot 1748 (762) in the Mukim of Perak, Daerah Temerloh, State of Pahang. Acreage 1 ac 3 r 00 p. The total selling price for the whole piece at Ringgit Two Hundred Twenty Thousand (RM220,000). Balance Amount: Ringgit One Hundred Ninety-Eight Thousand (RM198,000) only.
>
> I, namely, Yuzin bte Abdullah K/P 300823-10-5028 residing at No 9 Lorong Tun Ismail, 50480 Kuala Lumpur do hereby give my Irrevocable Consent To Sell the abovementioned property to Mr Sou Yong K/P 3415708.
>
> The duration for the completion of the sale is Three (3) plus 1 month @ 10% interest per annum. The signing of the sales and purchase agreement is to be signed upon the official search at the land office.
>
> Dated this 6 March 1997.
>
> | Sgd | Sgd | Sgd |
> |---|---|---|
> | Yuzin bte Abdullah
(Vendor) | Sou Yong
(Purchaser) | Lim Chiu Yong
(Witness) |
>
> KP 3141647

She had agreed to sell the land to Ho because Ho had told her that Lim and the plaintiff were not interested in the said land. The plaintiff denied that the defendant was drunk. He had signed chits for two glasses of red wine and he paid for the lunch. The restaurant was bright and they were not seated at any dark corner. Whilst his cheque was for RM20,000, he had also given RM2,000 in cash. He denied that there was any arrangement for valuation to be done. He contended that a carbon copy of the agreement was given to the defendant. In so far as he was concerned, it was a willing buyer/seller transaction.

Whilst denying that he had represented to the defendant that the land was for his own use, he had informed her that it was for investment purposes as it was a piece of agricultural land. He had named Homestead as the purchaser in the agreement because since the purchase was for investment purposes he had considered it more appropriate to use a private limited company as a vehicle. He also admitted that he and Lim had a 50% share each in Homestead.

Under cross-examination he agreed that the said letter dated 6 March 1997 made no mention that the defendant would grant a PA in respect of the said land to the plaintiff. He also confirmed that the said letter made no mention of the fact that Lim was a shareholder of Homestead nor that Homestead was the purchaser. He also admitted that there was no written agreement that he, Ho and Lim would jointly purchase the said land.

Whilst the defendant maintained that she met up with the plaintiff for dinner and drinks on 6 March 1997 and not for lunch as maintained by the plaintiff, to my mind this makes no difference. I shall deal with this aspect later.

Lim was PW2. He contended that both the plaintiff and defendant asked him to prepare the letter dated 6 March 1997. He confirmed the evidence of the plaintiff in all matters including the fact that Ho had been to see him to borrow RM60,000 to purchase the said land from the plaintiff. He was shocked and dismayed at Ho's conduct and ticked him off.

Under cross-examination, he maintained he had no interest in the land except when the plaintiff used Homestead as a vehicle. He had known the plaintiff for 15 years and Ho for 20 years. He denied a suggestion that Ho never came to see him to borrow the RM60,000. When challenged, if he could produce the copies of title, plaintiff's identity card and quit rent which the defendant had allegedly given to him on 6 March 1997, he said he could, through the plaintiff. He agreed that on 6 March 1997, he had a 50% share in Homestead and that he and his wife were the 2 shareholders of the said company.

The defendant testified that she had dinner and drinks with the plaintiff and Lim on 6 March 1997. She maintained that prior to this date Ho had offered to purchase the said land and that the plaintiff knew about it. It was because of this that the plaintiff wanted to meet her to purchase the said land himself. She testified that before she met the plaintiff she already had had quite a bit to drink. Before the invite, she was relaxing at home drinking. Basically she confirmed her pleadings. Whilst agreeing that the said cheque of the plaintiff for RM20,000 was banked into her account, she maintained that she had subsequently refunded the said sum. She denied that a copy of the letter dated 6.3.97 was given to her on that same day. She also denied saying she wanted to sell the said land for RM250,000. She also denied she had any intention of travelling to Temerloh to sign the agreement the next day, and further denied giving Lim a copy of the title, her identity card and the quit rent. She confirmed under cross-examination that Ho had offered her temporarily, RM220,000 for the said property. However, once there was a valuation report, Ho promised to make an offer

A accordingly. She denied the plaintiff's suggestion that she was aware that the intended purchaser was Homestead.

The defendant next called Ho. He confirmed that the plaintiff had introduced him to the defendant. He confirmed that he had offered to purchase the said land from the defendant. Since she had not replied him
B he enquired again and was told by her that the plaintiff too was interested in her land. When asked if she had sold the land to the plaintiff she said she had not. He confirmed that the defendant did not mention to Lim, the plaintiff and to him that she wanted to find a buyer for her land. He vehemently denied that he had met Lim on the morning of 6 March 1997 to borrow RM60,000 from Lim. In fact he testified that when he asked Lim
C in the Court canteen why Lim had made such a statement, Lim told him that it was because he had wanted to help the plaintiff since the plaintiff had promised Lim a share in the land. He valued the property at RM500,000.

Under cross-examination, he maintained that he had offered the defendant RM400,000 for the said property; however the defendant said
D that she was not keen to sell it as she wanted to keep it for her children. I find this bit of evidence more of an embellishment, than the truth.

The plaintiff argued that a valid agreement had been concluded with sufficient consideration in the form of the 10% deposit which the defendant had banked into her account. Though there was a mention of a need to sign a formal sale and purchase agreement, the plaintiff argued that that phrase
E was indicative of an intention to merely formalise an agreement which had already been concluded between the parties. The repudiation was unlawful said the plaintiff. With regard to the purchaser being Homestead, the plaintiff argued that it posed no problem since the defendant already knew of this possibility on 6 March 1997.

F As to the need for a valuation, the plaintiff contended that this was not agreed upon. In any case the defendant herself had testified that only Ho was requested to do a valuation and not the plaintiff.

Who is the actual purchaser of the land?

G Although the letter dated 6 March 1997 has been signed by the plaintiff and the defendant, it would seem from the evidence of the plaintiff himself and PW2, that the actual purchaser was not the plaintiff but Homstead. The plaintiff and his witness testified that the defendant was aware of this fact and that she had no objections. If that be the case I wonder why this was not reflected in the said letter. To my mind, there was a concerted effort by the
H plaintiff and Lim not to let the defendant know that it was Homestead that was purchasing the said property.

I have watched the plaintiff, defendant and their respective witnesses. Whilst the defendant seemed confused with details I find her an honest witness.

I The plaintiff is the actual purchaser in so far as the letter dated 6 March 1997 is concerned. However, almost all the other documents in the Common Agreed Bundle of Documents ('CABD') suggest that the actual

purchaser is Homestead. The plaintiff has also conceded to that. Yet the statement of claim shows that the plaintiff is the party claiming. The plaintiff further testified under cross-examination that he and Lim had agreed before meeting the plaintiff on 6 March 1997, that both he and Lim were to be the purchasers. Clearly, there is uncertainty as to the actual purchaser. In *Charles Grenier Sdn Bhd* v *Lau Wing Hong* [1996] 3 MLJ 327, the Federal Court held that only where the parties to the transaction, the property, the price and the essential terms have all been identified with sufficient clarity is it termed an 'open contract and enforceable'. On this ground alone this claim must fail for uncertainty. Surely, Homestead being a legal entity by itself is not the same party as the plaintiff or Lim.

Relief of specific performance

The plaintiff seeks specific performance and pleads for an order that the defendant do enter into a formal sale and purchase agreement and to complete the same pursuant to the terms of the letter dated 6 March 1997. I do not think the plaintiff can ask for such a prayer. The plaintiff cannot ask this court to order parties to enter into a contract. To my mind, this very plea means the plaintiff agrees that there is no contract and it therefore has to seek this court's assistance to make the contract. What the plaintiff ought to have asked for is a declaration that the letter dated 6 March 1997 constitutes a contract and then ask for specific performance of the terms of that letter.

But then again, if it was all that simple why did the plaintiff then send two different sets of draft agreement for the defendant to approve. Clearly the first draft agreement contained amongst other terms, a term that the defendant would create a power of attorney in favour of the plaintiff to enable the plaintiff to apply for subdivision. In the second draft, this term is omitted. It is plain as pikestaff therefore that there was uncertainty even with regard to the terms of the agreement.

In *Scammell* v *Ouston* [1941] 1 All ER 14 (HL), Lord Wright said at p 28:

> ... The court could not, indeed, make a contract for the parties, or go outside the words they had used, except in so far as there were appropriate implications of law, as, for instance, the implication of what was just and reasonable where the contractual intention was clear but the contract was silent in some detail which the court could thus fill in.

Exercise of discretion

Section 21 of the Specific Relief Act 1950 reads as follows:

> (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant any such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

A (2) The following are cases in which the court may properly exercise a discretion not to decree specific performance:

(a) where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part; and ... .

B

Both Lim and his wife were the shareholders and directors of Homestead. Lim and the plaintiff had agreed to be the joint-purchasers. Form 49 of the Companies Act 1965, which is a Return Giving Particulars in Register of Directors, Managers and Secretaries and Changes of Particulars, clearly shows that Lim's wife resigned on 1 April 1997 and that the plaintiff was C appointed a director on 31 March 1997. The said land is now sought to be bought by Homestead. I find that the plaintiff and Lim did not disclose to the defendant that the actual purchaser was to be Homestead.

Lim said in evidence that the defendant brought to the Lake Club copies of the title, her identity card and quit rent and that she had given D these to him to enable him to state all particulars in the said letter dated 6 March 1997. The defendant denied that she ever gave these documents. Under cross-examination Lim said he could produce these documents through the plaintiff. But neither of them did so. In any case surely it would have had a telling effect upon the plaintiff's case if these 3 documents if indeed they were in the plaintiff's possession, had been included in the E CABD during the case management stage. I am therefore compelled to find that the defendant did not give these documents. On this finding therefore, I have to disbelieve both the plaintiff's and Lim's version on this aspect of their evidence.

Another factor that raises doubt upon the credibility of Lim is his F evidence that Ho had approached him that morning for a loan of RM60,000. This evidence defies credulity and thus affects Lim's credibility. If Ho was intending to steal a march on the plaintiff and Lim by beating them to the purchase of the said land, surely Lim would have been the last person, no, not even the last person, that Ho would have gone to, to borrow RM60,000. The essence of stealing a march would have been lost by G informing the very person against whom he was competing, that he intended to steal a march on that same person, because the only evidence is, that all 3 had intended to purchase the property and the plaintiff had specifically asked Ho to look at the property.

I find that the conduct of the plaintiff and Lim falls squarely into the H category envisaged by s 21(2)(a) of the Specific Relief Act 1950 so as to give the plaintiff an unfair advantage. This is assuming that there is a contract which I have held there is not. To my mind it would have been more reasonable for the plaintiff to have asked for a valuation report before committing the defendant to a sale, if it was a sale. Jones and Goodhart in their 'Specific Performance', 1986 Ed at p 75 state that lack of professional I advice in circumstances calling for it, is an example of unfair conduct. I accept this proposition.

I totally reject the defence of drunkenness. There is no evidence of drunkenness except for the defendant's own self-serving allegation that she had a bit too much. In any case even if she had a bit too much I do not think that that had any influence on her. She willingly signed the letter dated 6 March 1997 but as I have held, that by itself, does not constitute a binding contract.

I accept the defendant's contention that she was never given a copy of the said letter. Since Lim knew so much with regard to the preparation of the said letter, so as to include all details, if indeed he had given the defendant a copy of the said letter I do not see why he had not stated so in the said letter by asking the defendant to acknowledge receipt of a copy.

Taking all matters into consideration, I have no hesitation in dismissing the plaintiff's claim with costs. However, under the general relief prayed for, I order that the defendant do refund to the plaintiff the sum of RM22,000 still with the defendant, forthwith, with no interest.

Plaintiff's claim dismiised with costs.

Reported by Jafisah Jaafar